



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 221110-0238]

RIN 0648-BL59

International Fisheries; Pacific Tuna Fisheries; 2022-2024 In-season Action

Announcement Procedures for Commercial Pacific Bluefin Tuna in the Eastern

Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations under the Tuna Conventions Act of 1950, as amended (TCA), to revise in-season action announcement procedures for the commercial fisheries for Pacific bluefin tuna. This proposed rule would amend procedures to add notification of in-season action by direct emails to the affected public. In-season actions would be effective upon the earlier of either receipt of the notification by email or publication of the notice in the **Federal Register**. In-season actions would also be posted on the NMFS website. This proposed rule would also add a provision to the in-season action procedures to allow any Pacific bluefin tuna already on board a fishing vessel on the effective date of a notification of in-season action to be retained on board and landed or transshipped within 24 hours of the effective date of the in-season action.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by *[Insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0106, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2022-0106” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Celia Barroso, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2022-0106” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal e-Rulemaking Portal:

<https://www.regulations.gov>, docket NOAA-NMFS-2022-0106 or contact the Highly Migratory Species Branch Chief, Lyle Enriquez, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or WCR.HMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562-432-1850, Celia.Barroso@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the Inter-American Tropical Tuna Commission (IATTC), which was established under the Convention for the Establishment of an IATTC signed in 1949 (1949 Convention). The 1949 Convention provides an international agreement to ensure the effective international conservation and management of highly migratory species of fish in the IATTC Convention Area. In 2003, the IATTC updated the 1949 Convention through the adoption of the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention).¹ The IATTC Convention Area, as amended by the Antigua Convention, includes the waters of the eastern Pacific Ocean (EPO) bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian.

The IATTC consists of 21 member nations and 5 cooperating non-member nations. The IATTC facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the Convention Area. The IATTC maintains a scientific research and fishery monitoring program, and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures to promote sustainable fisheries and prevent overexploitation.

International Obligations of the United States under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The TCA, 16 U.S.C. 951 *et seq.*, directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the

¹ See https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_Antigua_Convention%20Jun%202003.pdf.

Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

Recent Pacific Bluefin Tuna Rulemaking

NMFS recently published a final rule that implemented IATTC Resolution C-21-05 (Measures for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean) on commercial catch limits for Pacific bluefin tuna (87 FR 47939, August 5, 2022). That final rule established biennial and annual catch limits for 2022-2024 and trip limits on individual fishing vessels that adjust as catch thresholds are met throughout each year. That final rule also established procedures for announcing in-season actions to reduce the trip limit and close the fishery, as necessary (*see* 50 CFR 300.25(g)(7)). The procedures for announcing in-season actions initially proposed in that rulemaking could not be implemented because one component relied on a U.S. Coast Guard (USCG) Broadcast Notice to Mariners (BNM), and the USCG determined that announcements of in-season actions for the Pacific bluefin tuna fishery was outside of the scope of their allowed BNMs. Consequently, that final rule implemented the other components of the in-season action announcement procedures contained in the proposed rule (*i.e.*, announcing in-season actions via a posting on the NMFS website followed by publication in the **Federal Register** as soon as practicable), but the rule removed notification by BNM.

NMFS is soliciting public comment on a revised set of procedures for announcing in-season actions that are more consistent with the intent behind the original proposed rule implementing the IATTC resolution. The intent behind the revised procedures is to allow for quicker in-season action in part because the Pacific bluefin tuna fishery may catch a lot of the catch limit in a short period of time when Pacific bluefin tuna are available in U.S. waters. Quicker in-season action will assist NMFS in remaining within

the U.S. catch limits agreed to in the IATTC. As discussed further in the next section, this rule proposes amending the procedures for announcing in-season actions to add notification by direct emails to the affected public. In-season actions would be effective from the earlier of either receipt of notification by email or publication in the **Federal Register**.

NMFS is also soliciting comment on proposed regulations on prohibitions applicable to U.S. commercial fishing vessels in the event of an in-season action to reduce the trip limit. While the new trip limits would be in effect at the time and date announced, there may be instances in which vessels already had Pacific bluefin tuna in excess of the reduced trip limit on board at the time the in-season action was announced. As a result, NMFS is proposing to allow 24 hours for vessels that already had Pacific bluefin tuna on board in excess of the trip limit to land their catch.

Proposed Regulations for In-season Action Announcements for Commercial Pacific Bluefin Tuna for 2022-2024

As indicated in the previous section, NMFS is proposing to revise the existing procedures at 50 CFR 300.25(g)(7) for announcing in-season actions to reduce trip limits or close the fishery by adding notification by direct email to the affected public. In-season actions would still be published in the **Federal Register** and would also appear on the NMFS website at <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>. In-season actions would be effective upon the time and date that would appear in the earlier of either receipt by notification in a direct email or publication in the **Federal Register**. In accordance with the August 5, 2022, final rule, in the event the trip limit was reduced early or the fishery was closed due to an overestimation of catch, NMFS could reverse immediately the prior in-season action using the same procedures outlined above.

This proposed rule would also revise 50 CFR 300.25(g)(6) to clarify that, upon the effective date of a notice of in-season action to change a trip limit, targeting, retaining on board, transshipping or landing Pacific bluefin tuna in excess of the trip limit in the Convention Area will be prohibited. To avoid regulatory discards, that prohibition would include an exception to allow any Pacific bluefin tuna already on board a fishing vessel on the effective date of the in-season action to be retained on board and landed or transshipped within 24 hours after the effective date announced in the in-season action, to the extent authorized by applicable laws and regulations.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Economic Analysis

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under the Regulatory Flexibility Act (RFA), the SBA defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS

114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The entities the proposed action would directly affect are all U.S. commercial fishing vessels that may target (*e.g.*, coastal pelagic purse seine vessels) or incidentally catch (*e.g.*, drift gillnet vessels) Pacific bluefin tuna in the Convention Area. In 2020, there were 137 participants in the commercial fishery, whether targeting Pacific bluefin tuna or catching Pacific bluefin tuna incidentally. Not all vessels that have participated in this fishery decide to do so every year. For example, the coastal purse seine fleet participation in the Pacific bluefin tuna fishery has ranged from five to nine during 2016-2020. These vessels are characterized in greater detail below. U.S. commercial catch of Pacific bluefin tuna from the IATTC Convention Area is primarily made in waters off of California by the coastal pelagic small purse seine fleet, which targets Pacific bluefin tuna opportunistically, and other fleets (*e.g.*, California large-mesh drift gillnet, surface hook-and-line, west coast longline, and Hawaii's pelagic fisheries) that catch Pacific bluefin tuna in small quantities, such as incidentally.

U.S. Coastal Purse Seine Fleet

Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. purse seine fleet that have landed Pacific bluefin tuna has been less than \$11 million, whether considering an individual vessel or per vessel average. From 2016-2020, purse seine vessels that caught tuna had an average ex-vessel revenue of about \$1,044,000 per vessel per year (based on all species landed). Annually, from 2016 to 2020, the number of small coastal pelagic purse seine vessels that landed Pacific bluefin tuna to the U.S. West Coast ranged from five to nine. Table 1 below summarizes the number of coastal purse seine vessels landing Pacific bluefin tuna in each year 2016-2020, along with total annual landings and revenues.

Table 1 – Number of Small Coastal Purse Seine Vessels Landing Pacific Bluefin Tuna to the U.S. West Coast, Along With Annual Landings And Revenues From Pacific Bluefin Tuna, 2016-2020.²

Year	# of Vessels	Landings (mt)	Ex-vessel Revenue
2016	5	315.72	\$351,767
2017	8	466.43	\$516,135
2018	8	11.53	\$11,378
2019	9	226.11	\$258,937
2020	6	116.19	\$126,054

The revenue derived from tuna is 11.3 percent of the overall revenue for coastal pelagic purse seine vessels that landed tuna (annually from 2016-2020), with the majority of revenue in recent years from Pacific sardine, market squid, and to a lesser extent yellowfin tuna. In particular, on average (annually 2016-2020) yellowfin tuna made up 65 percent of all tuna landings by this fleet. Revenues and costs, and corresponding profitability, of coastal purse seine vessels are not expected to be significantly altered as a result of this proposed rule.

Other U.S. Fleets That Catch Pacific Bluefin Tuna

Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. fleet with landings of Pacific bluefin tuna in small quantities, such as from incidental catch or hook-and-line, has been less than \$11 million. These vessels include drift gillnet, surface hook-and-line, and longline gear-types. The revenues of these vessels are also not expected to be significantly altered by the proposed rule. From 2016 to 2020, between 7 and 14 drift gillnet vessels, 40 to 116 surface hook-and-line vessels, and 1 longline vessel landed Pacific bluefin tuna. During these years, vessels with gears other than purse seine landed an annual average of 55.2 mt of Pacific bluefin tuna, worth approximately \$487,300. If the fishery is closed before the end of the calendar year, regulatory discards by these fleets are likely. Such a scenario would result

² Landings and ex-vessel revenue are for all small coastal purse seine vessels that landed Pacific bluefin tuna in the year. Source: Pacific Fisheries Information Network

in a greater impact to the fleet that catches Pacific bluefin tuna in small quantities, as opposed to the coastal purse seine fleet, which would simply cease targeting of Pacific bluefin tuna.

Implementation of this proposed amended in-season action procedures would more closely align with the intent of the management scheme in the proposed (87 FR 12409, March 4, 2022) initial rulemaking that was finalized on August 5, 2022. That is, to provide NMFS with quicker in-season action to avoid exceeding catch limits, allow for more operational flexibility to the fleet to harvest the full catch limit while aiming to avoid regulatory discards in the event of a fishery closure.

Pursuant to the RFA and NMFS' December 29, 2015, final rule (80 FR 81194), this certification was developed using NMFS' revised size standards. NMFS considers all entities subject to this proposed action, which based on recent participation ranges from 88 to 137 because participation fluctuates substantially from year-to-year, to be small entities as defined by both the former, lower size standards and the revised size standards. Based on profitability analysis above, the proposed action, if adopted, will not have significant adverse economic impacts on these small business entities. As a result, an initial regulatory flexibility analysis is not required and was not prepared for this proposed rule.

Paperwork Reduction Act

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 14, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. In § 300.25, revise paragraphs (g)(6) and (7) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(g) * * *

(6) *In-season actions for trip limits and closure of the fishery.* If NMFS determines that action to change a trip limit needs to be taken under paragraphs (g)(3) through (5) of this section, the revised trip limit will be effective upon the date provided in a notification of in-season action in accordance with paragraph (g)(7) of this section. Upon the effective date of an in-season action to change trip limits under paragraphs (g)(3) through (5) of this section, targeting, retaining on board, transshipping or landing Pacific bluefin tuna in the Convention Area in violation of the in-season action shall be prohibited, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notification of in-season action may be retained on board and landed or transshipped within 24 hours after the effective date of the notification, to the extent authorized by applicable laws and regulations. After NMFS determines that the annual catch limits under paragraphs (g)(3) through (5) of this section

are expected to be reached, NMFS will close the fishery effective upon the date provided in the notification in accordance with paragraph (g)(7) of this section. Upon the effective date in the notification, targeting, retaining on board, transshipping or landing Pacific bluefin tuna in the Convention Area shall be prohibited through the end of the calendar year, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notification may be retained on board and landed or transshipped within 14 days after the effective date published in the fishing closure notification, to the extent authorized by applicable laws and regulations.

(7) *Announcement and effective dates of in-season actions.* If in-season actions under paragraphs (g)(2) through (6) of this section are needed, NMFS will post a notification on the NMFS web page (<https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>) announcing the in-season action, including effective dates. NMFS will also send emails with notification of the in-season action to affected vessel owners. This action will also be published in the **Federal Register** as soon as practicable. The in-season action will be effective upon the earlier of either (1) receipt by email of such notification, or (2) publication in the **Federal Register**.

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